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Samuel Moyn – *Christian Human Rights*

Thomas Pink

1. *Samuel Moyn's thesis*

According to Samuel Moyn's *Christian Human Rights*, it is in the middle of the twentieth century that human rights become important in public politics and international law. But they enter the public world as conservative or Christian human rights, principally through Catholicism. Authoritarian regimes have become discredited as a Catholic political form. The way forward is to espouse democracy, but within a morally conservative framework. Recognition is given to the rights, liberty and dignity of the individual, but so understood as to oppose secularism – and especially to oppose Communism.

These individual rights are understood in personalist terms, as based on human dignity. They are rights to liberty and especially rights to religious liberty. But the person is understood as spiritual and directed at spiritual ends, and liberty is understood in terms of natural law – as subject to the moral constraints of a divine order, not as directed at human emancipation or autonomy or preference satisfaction.

This Catholic personalism is increasingly taken up by the official Church, and eventually involves ecumenical cooperation with Protestantism. This is a process that begins under Pius XI and Pius XII and is completed in *Dignitatis Humanae*, the declaration of an individual moral right to religious liberty by the Second Vatican Council.

This espousal of human rights as rights of individuals, Moyn claims, is not really faithful to earlier Christian tradition, which especially as Thomism or in earlier intellectual forms was never friendly to human rights, as neither were the nineteenth century popes. It is a hijacking or an exploitation for conservative ends of elements that come from outside the older Christian tradition.

But radical departures nonetheless occurred very late in Christian history, even if they were unfailingly represented as consistent with what came before: this is how the invention of tradition most frequently works. Christian human rights were injected into tradition by pretending they had always been there, and on the basis of minor antecedents now treated as fonts of enduring commitments. *Christian Human Rights*, p5

2. *A critique in outline*

The mid-twentieth century Catholic emphasizing of individual rights, eventually to include a very explicit declaration of a right to religious liberty, was certainly new.

But it was not an injection into tradition of something alien. Rather it arose out of a distinctively Catholic and very traditional model of the relation of liberty and law. This model is crucially indeterminate in its concrete implications for personal liberty. In matters of religion especially, the model can both support coercion and oppose it.

This model was central to the political theology of Leo XIII (pope 1878-1903) which from the 1880s to Vatican II provided an official framework for understanding religious liberty within the Church. We can therefore term this model of law and liberty the Leonine model. But the model was very old. The model was central to the counter-reformation Jesuit political theology of Bellarmine and Suarez, which Leo XIII revived. Already at the counter-reformation the model taught the existence of individual rights, including rights to liberty. And this understanding of the rights of the individual in turn had its roots in the Church's canon law tradition, which even before the rise of a language of personal rights treated aspects of the human person as constituting a normative block to the coercion of the individual in their religious belief and practice.

The mid-twentieth century saw a new development of the Leonine model, especially through the work of Jacques Maritain. The model was now used to assert the religious liberty of the individual rather than the legitimacy of religious coercion. But the right to religious liberty asserted was a Leonine right. It was quite quite different from any right to religious liberty found in secular political theory.

This change was more theologically driven than Moyn allows for. It was not simple political opportunism, but also reflected a profound shift in general theology away from a previous dominance of Augustine and Augustinianism – a dominance that had been reconfirmed at Trent, and that still marked the teaching of Leo XIII and other nineteenth century popes. This means that the Catholic espousal of individual rights was also much less conservative than Moyn allows for. Moyn's association of official Christianity with the conservative can be dangerous. Moyn mentions the Christian realism espoused by such a figure as the Protestant jurist Gerhard Ritter. Christian realism takes a pessimistic view of the fallen human condition: morality alone will not reverse evil, and coercion may be needed (p104). The Catholic retreat from Augustinianism involved the reverse of Ritter's Christian realism. The nineteenth century popes had defended the Leonine model while taking a bleak view of the fallen world: because of the Fall power needed to be disciplined not only morally but through the state giving coercive protection and privilege to religious truth. By contrast, *Dignitatis Humanae* with its defence of individual liberty was a restatement of the Leonine model for a benign view of the world as by now much more reliably oriented towards the good. This move away from Augustinianism was not a narrowly political development. It was reflected in areas of Catholic life that lay far from political theology. For example, it was central to the radical liturgical reforms that followed Vatican II, which saw the extensive suppression of ancient prayers (such as the old collects for Lent) that had emphasized fallen human weakness and vulnerability to evil.

3. *The Leonine model*

Central to the Leonine model is our standing as humans as bearing the image of God –

and much of the talk about human dignity is really a packaging of this conception in less overtly religious terms. We bear the image of God as possessing the capacity both for reason and for freedom as a power to determine for ourselves what we decide and do – a power of free will or control that is multi-way, making alternatives available to us.

This power has a function – to take us to the good, and so make alternative goods available to us. But we can misuse this power, and as fallen beings we frequently do misuse it, to go for options that are bad.

This power of freedom, with its function of making alternative goods available to us, has important normative implications. First it gives us as individuals a right not to be coerced – a right not to be subjected to direction backed by threats of sanction – unless by a legitimate authority. For coercion, with its threat of sanction, is all about removing or lessening the good involved in options other than that to which the coercer is directing us. Coercion is thus in tension with a power whose very function is to provide us with alternative goods. That is why coercion always stands in need of justification.

Now our fallen condition does indeed leave room for some coercion to be justified. The power of freedom as exercised by fallen humans requires direction by sanction-backed law, to deter bad use of freedom that would harm the community. Not only is direction by sanction-backed law needed to direct the use of freedom by fallen humans, but the same power of freedom also makes the law's threat of sanction fully legitimate when understood as punishment. For the power of freedom makes us morally responsible for any breach by us of the law. Given our freedom and the moral responsibility it bases, the sanctions that meet such a breach can be genuinely deserved as fair punishment.

So free will is both a normative block on coercion and a normative enabler of it. Free will blocks coercion by private individuals or by institutions that lack proper authority. But once the coercion is being imposed with proper authority, free will then legitimizes that coercion and helps justify it.

This conception of human free will as both normatively blocking coercion and normatively enabling it long predated the language of individual rights. Take the fourth council of Toledo in the seventh century, so important within the subsequent canonical tradition. Free will or *liberum arbitrium* protects unbaptized Jews from being subject to coercive pressure into baptism by the Church, this council teaches; but once people are baptized, they are subject to the law and jurisdiction of the Church, and the faith can be punitively imposed upon them. Once people are baptized, the Church stands to them as a legitimate authority competent to impose religious obligations. But without baptism people fall outside the Church's jurisdiction, and their free will blocks the coercion.

Central to the Leonine model is the question of legitimate authority. What authorities have the right to coerce and in what areas of life?

Dignitatis Humanae is a highly peculiar document by secular standards. Moyn mentions a Rawlsian model of religious liberty: the state and political life occupy a

public realm from which religion is protected as long as it remains private. The state and political life transcend religion. In *Dignitatis Humanae*, by contrast, we have a quite opposite understanding. Religion is properly part of the public life of any political community – but it transcends the state and state authority.

So our right to religious liberty is very unlike another highly important right – the right to liberty of movement, the right (within limits) not to be subject to coercion in respect of where we go. Though that right is fundamental to human liberty, the good of movement hardly transcends state authority. The state can regulate movement, through transport and traffic rules, for the general good, including for the sake of movement itself. But the Catholic view of religious liberty is quite different. Religion, as involving the worship rightly given to God alone, is a good entirely transcending state authority. The state lacks any authority of its own to coerce on grounds specific to religion, such as restricting religions on grounds of their supposed falsehood, or legally privileging a religion on grounds of its supposed truth.

Why does religion entirely transcend state authority? Only because of a distinctively religious view of religion. In the Leonine model religion does not transcend coercive authority as such. Coercion to protect and privilege religious truth may be justified. Instead the coming of Christ has raised religion and the religious good to a supernatural end, the beatific vision of heaven, that transcends the capacity of human nature, and where the state has no competence. In Jesuit and ultramontane Leonine political theology Christ is a religious liberator; in particular he liberates religion from the authority of the state. Religion is removed by Christ from the authority of the state that serves natural goods such as movement through space, but is then handed over to the Church, a new and specifically religious coercive authority with the sole right to legislate and punish in matters of religion.

So it is a constant feature of the Leonine model to teach an individual right to religious liberty – against the authority of the *state*. It is the state that lacks the authority to legislate and punish in matters of religion. And it is a right to religious liberty against the state that is taught in *Dignitatis Humanae*.

Moyn's question was why in the mid-twentieth century the popes suddenly began to emphasize rights to liberty against the state, especially in matters of religion. But in fact we should ask why, given this Leonine framework, they were not doing so long before. Why was the right to liberty of religion against state authority, a right that is built into the Leonine model, so long unexpressed?

That was because of the final element to the Leonine model – the relation of Church and state. The Church can address the state in two very different ways. The Church can address the state as an independent civil *potestas* – an independent player when it comes to exercising coercive authority. And that is what, when facing the Nazi and Communist regimes that might threaten religion, it was indeed very natural for the Church to do. But the Church can also address the state as she had earlier done – as still hopefully, in the Church's own aspiration, a Christian state united to the Church in a single Christian community. Here, according to Leonine teaching, Church and state were to be united as soul and body are united in a single person: the state would act as agent for the Church in religious matters as the body acts at the behest of the soul in intellectual matters.

Where we have a soul-body union of Church and state, the state does make laws in matters of religion and enforce them. But in so doing the state is not acting on its own authority in a normative order that is civil and based wholly on natural law. Rather the state is acting in a normative order that is specifically religious, and as an agent for the religious authority of the Church.

And that is how the nineteenth century popes still wanted to address the state, most explicitly in the case of Leo XIII himself – in *Immortale Dei* of 1885 - and in the official manual theology which that encyclical, especially, gave rise to. In the context of a soul-body union, our rights to religious liberty may be rather restricted. Since the state is acting as the Church's agent, our religious rights will only be those we have against the Church as defender of the religious good. Much more important will be the significantly restrictive duties in relation to religion that can be politically imposed on us, again under the authority of the Church. We can be forbidden to practise false religions publicly, or to evangelize publicly on their behalf.

4. *Dignitatis Humanae*

Maritain was faithful to the general Leonine model. So too, at Vatican II, was Paul VI, himself a Maritainian. This is why, acting on Paul VI's instructions, the commission that drew up *Dignitatis Humanae* worked within the Leonine model. The Leonine model was repeatedly reaffirmed in the official communications – the *relationes* – by which the commission explained the draft declaration to the council fathers. These *relationes* reassert the Leonine division between two levels of coercive legal authority: the religious order served by the Church as one coercive *potestas* and the civil order served by the state as another. What *Dignitatis Humanae* crucially does is to assume a detachment of the state from any agency relationship with the Church. But of course, in the context of such a detachment, a right to religious liberty against the state follows immediately from the Leonine model as traditionally conceived. This right is no invention of tradition, but an expression of it.

Dignitatis Humanae also clearly assumes (though this is not explicitly taught) that this detachment of state from Church is an advance. This is indeed quite a change. By contrast Leo XIII regarded Church-state separation as an evil that might have to be tolerated, but which should be resisted where possible. This change is obviously crucial. It ensures that the Church no longer even aspires to a soul-body union of Church and state. What explains this change?

Moyn's thesis might suggest simple opportunism. Church-state union was being abandoned after the second world war only because it was now a politically unrealistic way of fighting secularism. But that cannot be the whole story. In Italy in 1885, given the hostile regime of the new united Italian monarchy, a union of Church and state was less realistic than it was under the much friendlier regime of the new post-1946 Italian republic. But in 1885 Leo XIII still chose to espouse soul-body union as the ideal. And in 1965, from a position of greater political advantage at its centre, the Church was choosing to abandon that ideal.

Communism was of course a factor. There was a need for international support for

local Catholic churches oppressed by hostile Communist regimes, support that would be alienated by any continued demand that states privilege Catholicism. But the change would not have been possible without a new view of the Fall and its consequences. The nineteenth century popes had taught that the state needed Church-state union to function properly as a state. Detached from the Church, in a fallen world the state would become corrupted and would cease to defend and apply the natural law. It would violate natural justice in relation to marriage and the rights of the vulnerable. The state would even cease to recognize religion itself as a genuine good.

But Maritain and his disciples thought that Church-state separation would not have this consequence. Thanks to the influence of the Gospel, the state no longer needed to be united to the Church to function as it should. Church state-union conceived in Leonine terms was legitimate and necessary for the more primitive ‘sacral period’ of the middle ages. But in the more spiritually advanced ‘secular age’ of the present the state could become religiously neutral, and still be relied upon to respect natural law. This detachment of state from Church was not an obstacle to the progress of the Gospel, but a sign and expression of it.

And that is how you get *Dignitatis Humanae* – as a reworking of the Leonine model for the ‘secular age’. The declaration in no way challenges the traditional theory of the Church as a coercive *potestas* in the field of religion. It simply defends the old Leonine and specifically Christian view of the right to religious liberty – as reflecting Christ’s liberation of religion from state authority. The novelty is not the much-discussed personalist emphasis on human dignity and its rights – in itself that view of human moral status was nothing new in Catholicism – but a Whig theology of secularization as spiritually progressive. The bad consequences of the Fall are being ameliorated through the influence of the Gospel, but in a way that operates through secularization and not against it, as with a growing human spiritual maturity the state is released from an archaic ‘sacral’ dependence on the Church.

The nineteenth century popes had no time for any such Whig theory of human spiritual progress. It is an interesting question whether the actual consequences of political secularization have proved them right. But without this Whig theology of spiritual progress after the Fall, the mid-twentieth century Catholic prioritization of religious liberty over coercion would never have been possible.